

Advisory Opinion

IECDB AO 2006-01

March 30, 2006

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(11) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on the use of candidate campaign funds for a mailing that advocates for the election of the candidate and for or against the passage of a ballot issue. The Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

Iowa Code sections 68A.301 through 68A.303 and Board rule 351—4.25 set out specific permissible and impermissible uses of candidate campaign funds. Iowa Code section 68A.303(1) specifically states “a candidate's committee may only transfer campaign funds in one or more of the following ways...”

Based on the language in Iowa Code section 68A.303(1) set out above, the Board has consistently held that a candidate could not make contributions from the candidate's campaign funds to a political committee (PAC).¹ This determination is based on the fact that the contribution of candidate campaign funds to a PAC was not included in the permissible transfers of campaign funds set out in the statute.² In addition, other sections of the state campaign laws in Iowa Code chapter 68A place limitations on candidates being involved with PACs. This further indicates the intent of the General Assembly to prohibit the use of candidate campaign funds for contributions to PACs.³

The issue has been raised concerning whether or not it is permissible for a candidate to use the candidate's campaign funds to pay for the cost of a mailing that advocates both the candidate's election and advocates for or against the passage of a ballot issue election.

We are of the opinion that so long as all of the following factors are met, it would be permissible for a candidate to use the candidate's campaign funds for a mailing that advocated both the candidate's election and advocated for or against the passage of a ballot issue election:

1. The mailing advocates for the candidate's own election as well as that of the ballot issue.

2. The mailing is not done in “coordination” or is otherwise a “coordinated expenditure” with a ballot issue committee.⁴ If the mailing is a “coordinated expenditure” with a ballot issue committee it becomes an impermissible in-kind contribution from the candidate’s campaign to the ballot issue committee.
3. The mailing contains the proper “paid for by” attribution and is properly disclosed on the candidate’s campaign disclosure report.

In closing, the Board notes that nothing in the campaign laws prohibit a candidate from making a contribution from the candidate’s personal funds to a PAC.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ For purposes of this opinion “political committee” will be referred to as a “PAC” and “PAC” includes a ballot issue committee.

²See Board rule 351—4.25(1)“h” that does permit the purchase of up to two tickets at \$25 apiece for a PAC event so long as the candidate and the candidate’s guest attend the event and attendance promotes or enhances the candidacy of the candidate.

³See Iowa Code section 68A.202 that places restrictions on a candidate from forming more than one campaign committee and prohibits a PAC from being formed to advocate for or against only one candidate and Iowa Code section 68A.303(5) that prohibits a candidate for statewide or legislative office from establishing, directing, or maintaining a PAC.

⁴See Board rule 351—4.53(4) for the definition of a “coordinated expenditure.”